

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.27 - SELF-FUNDED EMPLOYEE HEALTH CARE PLANS

DOCKET NO. 18-0127-0601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Idaho Code § 41-211 and Chapter 40, Title 41, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule deletes obsolete wording and implements changes to requirements for employer sponsored self-funded health plans made by House Bill 822. These changes include requirements for information to be submitted to the Department of Insurance to register the plan and requirements for maintaining and reporting reserves and surplus. In addition, changes have been made to conform the rule to Office of Administrative Rules standards.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Amends existing rule to incorporate changes to governing law made by House Bill 822.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: The rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes made by this rulemaking were needed to conform the existing rule to changes in governing law (HB 822).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Georgia Hill, 208-334-4314.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2006.

DATED this 23rd day of August, 2006.

Shad Priest, Acting Director
Idaho Department of Insurance
700 West State St., 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0127-0601

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying ~~at cost in the main office of this agency in~~ accordance with the public records act. (4-5-00)(7-1-06)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 101 through 400. (4-5-00)(7-1-06)T

004. INCORPORATION BY REFERENCE.

There are no documents to be incorporated by reference. (7-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (7-1-06)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (7-1-06)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (7-1-06)T

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. (7-1-06)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (7-1-06)T

0057. -- 009. (RESERVED).

~~0040~~10. DEFINITIONS.

All terms defined in Title 41, Chapter 40, Idaho Code, which are used in this rule shall have the same meaning as used in that Chapter. (4-5-00)

011. -- 020. (RESERVED).

~~010~~21. QUALIFICATION OF PLAN.

In order for a plan to qualify under Title 41, Chapter 40, Idaho Code, the plan's trust must be established by agreement between the employer or employers and the trustee of the trust, for the sole purpose of providing health care benefits to employees of the employer or employers. (4-5-00)(7-1-06)T

~~012~~22. REGISTRATION.

01. Registration Required. No self-funded plan, unless exempted from registration by Section 41-4003(2), Idaho Code, shall be organized and permitted to operate in the state of Idaho without securing a Certificate of Registration from the director of insurance. (4-5-00)

02. Specific Plans. Any plans covering the employees of a common employer shall be deemed to be a

single plan in respect to the exemption for registration allowed in Section 41-4003(2)(a), Idaho Code. Any combinations of plans under the effective control of a single administrator, trustee, and/or employer, or group of administrators, trustees and/or employers utilizing or attempting to utilize the exempt dollar amounts permitted under Section 41-4003(2)(a), Idaho Code in order to avoid registration of any such plans is deemed to be contrary to the intent of Chapter 40, Title 41, Idaho Code, and is expressly prohibited by this rule. (4-5-00)

03. Beneficiary Within State. Registration is required of Plans that cover any beneficiary working or residing within this state, unless the plans ~~is~~ are otherwise exempted by Section 41-4003(2), Idaho Code. (4-5-00)(7-1-06)T

~~0423.~~ APPLICATION FOR REGISTRATION.

01. Application. ~~In addition to the~~ The application must include each of the requirements set out in Section 41-4005, Idaho Code, a written statement of projected income and disbursements of the Fund for the twelve (12) month period commencing with the date of application must be filed with the application for registration. This statement must show the amount reserved as of the beginning and end of such period for claims incurred and not paid and incurred and not reported. The statement must be certified by an actuary who is a member of the American Academy of Actuaries. The certification must be projected income and disbursement statement referenced in Section 41-4005(2)(d), Idaho Code, must be certified by an actuary meeting the qualifications of Section 41-4005(6), Idaho Code, and accompanied by a description of assumptions used in projecting income and disbursements together with bases used to estimate amounts reserved for claims. (4-5-00)(7-1-06)T

02. Trust Agreement. (7-1-06)T

a. The trust agreement must comply with Title 41, Chapter 40, Idaho Code, and, to the extent not in conflict with Title 41, the trust agreement must also comply with Title 68, Idaho Code, and Title 15, Chapter 7, Idaho Code. The trust agreement must contain, at a minimum, the conditions set forth in Section 41-4004, Idaho Code. (7-1-06)T

b. The term irrevocable as used in Section 41-4004(1), Idaho Code, means that the plan sponsor cannot retain the power to alter, amend, revoke or terminate the transfer in trust. The trustee may, pursuant to the terms of the trust agreement, amend the terms of the trust agreement for the purpose of complying with applicable law. (7-1-06)T

03. Biographical Affidavit. The application must be accompanied by a biographical affidavit for each trustee on a form acceptable to the director. (7-1-06)T

~~04324.~~ INVESTIGATION OF PROPOSED APPLICATION FOR REGISTRATION.

The director may make an investigation of matters accompanying the application for registration as deemed necessary including an examination specified in Section 41-4013, Idaho Code. Costs of any investigation and/or examination shall be borne by the trust fund of the plan. (4-5-00)

~~04425.~~ CONTRIBUTIONS RECEIVABLE.

The trust fund may take credit in any financial statement for contributions receivable which are not in excess of ninety (90) days past due. (7-1-93)

~~04526.~~ TRUST FUND RESERVES AND SURPLUS.

01. Reserve Requirements. The trust fund of the plan must continuously maintain reserves sufficient to fully fund payment of all benefits in effect at the time a claim thereunder arises. This reserve must adequately provide for all reasonably estimated future claim payments, adjustment expenses, and litigation expenses on claims which have arisen, including claims incurred but not reported, extended benefits and maternity benefits, if any. (7-1-93)

02. Reserves for Disability Income Benefits. Reserves established for disability income benefits shall be in an amount not less than reserves determined by ~~application of factors in the 1964 Commissioner's Disability Table with interest at four percent (4%);~~ the Minimum Reserve Standards for Group Health Insurance Contracts set

forth the in the NAIC's Accounting Practices and Procedures Manual as adopted by the director unless it can be ~~proved~~ proven to the satisfaction of the director that a lower reserve can be actuarially justified. ~~(7-1-93)~~(7-1-06)T

03. Certification by Actuary. Reserves must be certified annually by an actuary who ~~is a member of the American Academy of Actuaries, and~~ meets the requirements of Section 41-4005(6), Idaho Code, such certification must be accompanied by a statement describing bases used in reserve determination. The certification shall be in a form acceptable to the director. ~~(7-1-93)~~

04. Insolvent Condition. If determination of ~~reserves surplus~~ reveals ~~an insolvent condition~~ a deficiency in surplus, the director may, in his discretion, allow the plan a period of time ~~deemed adequate and reasonable not exceeding ninety days~~ to accumulate required ~~reserves surplus~~. The plan shall be deemed to be insolvent when the assets are not sufficient to meet all liabilities, including required reserves. ~~(7-1-93)~~(7-1-06)T

05. Surplus. The trust fund of a self-funded plan shall maintain a surplus equal to thirty percent (30%) of unpaid claim liability of the plan. The total unpaid claim liability to which the thirty percent (30%) is calculated against includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. A newly formed self-insured plan with no prior operating history shall maintain surplus of not less than ten percent (10%) of unpaid claim liability of the plan during the first year and not less than twenty percent (20%) of the unpaid claim liability of the plan during its second year of operation. The unpaid claim liability includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. ~~(7-1-06)T~~

06. Letter of Credit. To qualify as surplus, the clean, irrevocable, unconditional and "evergreen" letter of credit must be issued by a qualified United States financial institution having a branch office in Idaho. Qualified financial institution shall have the same definition as set forth in Section 41-514(3), Idaho Code. ~~(7-1-06)T~~

~~046~~27. BONDING.

01. Certified Copy of Bond. A certified copy of the fidelity bond or equivalent coverage, as required under Section 41-4014(3), Idaho Code, shall be furnished to the director by the plan. ~~(4-5-00)~~(7-1-06)T

02. Cancellation of Bond Requirements. ~~Section 41-4014(3), Idaho Code, requires thirty (30) days advance notice, in writing, of the effective date of cancellation of a surety bond.~~ The bond must contain language stating that it is noncancellable except upon not less than thirty (30) days advance notice in writing to the trustee and the director. A copy of any notice cancelling a bond required under ~~the Act~~ Chapter 40, Title 41, Idaho Code, is to be forwarded to the director by the surety at the same time it is forwarded to the trustee. ~~(4-5-00)~~(7-1-06)T

~~047~~28. ANNUAL STATEMENT.

The trustee shall file an annual statement within ~~sixty~~ ninety (90) days after the close of each fiscal year of the Plan and at such other time as may be determined by the Director. A quarterly statement shall be filed with the director within sixty (60) days of the end of each quarter in a form acceptable to the director. ~~(7-1-93)~~(7-1-06)T

~~048~~29. SEVERABILITY CLAUSE.

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby. ~~(7-1-93)~~

~~049~~30. -- 999. (RESERVED).